

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA ) 4:15-CR-151-0(11)  
 )  
v. ) Sentencing  
 )  
BRIAN HARRIS ) December 7, 2015

BEFORE THE HONORABLE REED C. O'CONNOR  
*United States District Judge*  
*In Fort Worth, Texas*

FOR THE GOVERNMENT:

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1 (December 7, 2015.)

2 THE COURT: All right. We are here now in case  
3 number 4:15-CR-151, the United States versus Brian Harris.

4 Mr. Smith is here for the Government. Mr. Davidson  
5 is here for the defendant.

6 Sir, would you state your full name for the record.

7 THE DEFENDANT: Bryan Alan Harris.

8 THE COURT: All right. Thank you, sir. We are here  
9 for purposes of your sentencing.

10 Counsel, did you and your client receive in a timely  
11 manner a copy of the Presentence Investigation Report, the  
12 Addendum, and the Second Addendum to the Presentence  
13 Investigation Report?

14 MR. DAVIDSON: I believe we did, Your Honor.

15 THE COURT: Have you carefully reviewed those  
16 documents with your client?

17 MR. DAVIDSON: Yes, sir.

18 THE COURT: Did the Government receive this is  
19 timely?

20 MR. SMITH: Yes, Your Honor.

21 THE COURT: All right. Now, there have been a number  
22 of objections filed in the case. Many of them have been  
23 accepted in the Addendum. Two objections I think -- the two  
24 objections that remain, the substance of them that remain,  
25 they may affect other guidelines, deal with the calculations

1 of the relevant conduct, and then also whether the mitigation  
2 role -- whether it should be -- receive a reduction for a  
3 mitigating role.

4 Do I understand what remains, Mr. Davidson?

5 **MR. DAVIDSON:** The mitigating role. Yes, Your Honor.  
6 I don't remember an objection to the relevant conduct. I'm  
7 not sure what the Court is referring to there.

8 **THE COURT:** The date --

9 **MR. DAVIDSON:** Oh.

10 **THE COURT:** -- for the calculation of --

11 **MR. DAVIDSON:** Right.

12 **THE COURT:** -- relevant conduct. Now, it seems to me  
13 that even if that date is moved forward from November 1, that  
14 because of his criminal history though sort of collateral -- I  
15 don't know if "collateral" is the right word, but sort of the  
16 consequence of moving those forward, because of the extent of  
17 his criminal history, that I'm not sure that it would make a  
18 difference on the criminal history point.

19 **MR. DAVIDSON:** Honestly, Your Honor, I don't think  
20 moving that date affects the Guideline range. My objection to  
21 that was based upon -- primarily on the fact he was released  
22 on October 31st and he did not immediately get back into  
23 dealing drugs and so I was challenging the Government's  
24 contention that that's exactly what he did and it turns out  
25 the Government produced no evidence to show that that was the

1 case, they simply referred back to, well, he was involved, you  
2 know -- well, six or seven or eight months from the time --  
3 dating back from in June when he got arrested. We'll concede  
4 he got back into drug dealing sometime after he got out, maybe  
5 it was late November, maybe December, January. I'm not sure,  
6 I'm not sure he's sure, but it wasn't right away. That was my  
7 point.

8 **THE COURT:** Yes. And all I'm saying is to the extent  
9 that day gets movement -- we move it forward, I think because  
10 of the extensive criminal history that even though we move it  
11 forward it reduces those points at all. That's all I'm  
12 saying.

13 **MR. DAVIDSON:** I don't know that the does and it  
14 certainly doesn't change the category.

15 **THE COURT:** Right. Right. Okay. Very good. Do you  
16 wish to -- at least on the mitigating role or anything else,  
17 do you wish to present any evidence?

18 **MR. DAVIDSON:** I do, Your Honor.

19 **THE COURT:** Very good.

20 **MR. DAVIDSON:** I have an exhibit, Exhibit 1, that I  
21 would offer both for this and for my contention that he should  
22 get a lower -- a downward variance. I think this exhibit  
23 is relevant to both. I will provide a copy to the Government.

24 May I approach?

25 **THE COURT:** Yes, please.

1 (Handed to the Court.)

2 MR. DAVIDSON: For the benefit of the Court, this is  
3 the chart I put in my -- I believe it's my objections to the  
4 Addendum or my Sentence Memorandum, I'm not sure which,  
5 although I added the column on the far right.

6 THE COURT: Okay.

7 MR. DAVIDSON: That I've been updating with the  
8 sentences the Court has imposed in the various codefendant  
9 cases.

10 And, Your Honor, as far as the mitigating role, as  
11 discussed in my Sentencing Memorandum, the Guidelines have  
12 been amended as of November 1st to -- certainly, as I  
13 understand it, to encourage courts to grant that mitigating  
14 role adjustment more often. I think the Sentencing Commission  
15 had come to the conclusion that courts were not giving it  
16 nearly enough and so they revised that guideline and they  
17 listed five factors in Subsection C of the application note  
18 and as I ride these five factors it looks like every one of  
19 them would apply to Mr. Harris. He was low down on the drug  
20 conspiracy chain and was not anywhere close to the top, as I  
21 believe that chart shows -- and, by the way, was that Exhibit  
22 1 admitted?

23 THE COURT: Yes. I'm sorry. It will be admitted.  
24 Yes. And I'd seen a version of it --

25 MR. DAVIDSON: Right.

1           **THE COURT:** -- in your pleadings already.

2           (Admitted in Evidence as Defendant's Exhibit 1.

3           **MR. DAVIDSON:** But when you look at those five  
4 factors that are in the new application note, it looks like to  
5 me he mets every one of them. I feel certain at least a two  
6 level reduction for mitigating role would be appropriate and  
7 maybe a three or four level role. I just rely on what I put  
8 in the Sentencing Memorandum my objections for the rest of the  
9 explanation.

10           **THE COURT:** Thank you, sir. I will overrule the  
11 objection to the mitigating role. I feel the PSR shows in  
12 many respects that he operated his own network for the --  
13 whatever period of time he got back into the drug business --  
14 and in the paragraphs of the PSR, other than that portion of  
15 the document that discusses how he served as protection for  
16 the other person -- for the codefendant, I believe that all of  
17 the factors in the amended guideline weigh against a downward  
18 adjustment in this case.

19           Based upon that, I will adopt the fact findings  
20 contained in the Presentence Report and the Addendum.

21           I will adopt the probation officer's conclusions as  
22 to the appropriate guideline calculations and determine that  
23 they are as follows:

24           A total offense level of 29.

25           A Criminal History Category of VI.

1           An imprisonment range of between 151 months and 188  
2     months.

3           A supervised release range of between 4 and 5 years.

4           A fine range of between \$15,000 and \$5 million  
5     dollars.

6           And, of course, a mandatory special assessment of  
7     \$100.

8           Does the Government wish to be heard on sentencing?

9           **MR. SMITH:** No, Your Honor.

10          **THE COURT:** Mr. Davidson, I will turn the floor over  
11     to you. I have read all of the letters and affidavits that  
12     you have provided to me including a long and what I take to be  
13     a very heartfelt letter from the defendant and with -- and, of  
14     course, I've read your pleadings, and so with that said then,  
15     I will now turn the floor over to you for final arguments.

16          **MR. DAVIDSON:** Thank you, Your Honor. And I will  
17     state for the Court's benefit that that statement that the  
18     defendant wrote he wrote and I simply typed it up and  
19     corrected a few spelling and grammatical errors. But it is  
20     from him, he wrote that, and I didn't change it substantively.

21          **THE COURT:** Thank you.

22          **MR. DAVIDSON:** Your Honor, as I discuss in the  
23     Sentencing Memo, a number of district court judges have  
24     concluded that the sentence guidelines for drug cases are  
25     inappropriately harsh and the statistics I quoted in that

1 Sentencing Memo indicate that a lot of these drug cases are  
2 resulting in downward variances, far more than result in  
3 upward variances and that those variances are reducing  
4 sentences by something like 30% from what the bottom of the  
5 guidelines is. That, the fact that will the drug quantity  
6 table last year was amended to make it slightly more lenient,  
7 the fact that, as I interpret it, the mitigating role  
8 adjustment has been made more lenient, I think the courts, the  
9 Sentencing Commission, are recognizing that these drug  
10 guidelines are too harsh, are resulting in a lot of people  
11 being put away in prison for a very long time that don't  
12 really need to be put that for that long, and I would submit  
13 that Mr. Harris's case is exactly that kind of case.

14 He's a low level drug trafficker who was dealing  
15 primarily because he's a drug addict and he needed money to  
16 support his drug addiction. He didn't get rich off of this  
17 scheme. He didn't make a lot of money. He just used it to  
18 get drugs to support his.

19 He does have an extensive criminal history; I can't  
20 argue with that, but as I pointed out in the Sentencing Memo,  
21 none of it is serious stuff, none of it is violent. The  
22 longest sentence he has ever done is two years. And this, the  
23 sentence that the Court imposes today, is going to be much  
24 longer than that, but at a minimum two and-a-half times as  
25 long as any sentence he has ever served.



1           A number of those judges whose opinions I quoted  
2       focus on the fact that the defendant's role in the -- in  
3       offense, the role in the conspiracy is a critical factor and I  
4       would submit that his role is -- enlists -- I understand the  
5       Court's ruling on mitigating role adjustment. I disagree with  
6       and I understand it. But this chart that I gave the Court  
7       shows that he was a fairly low level dealer. He was not  
8       dealing to his codefendants, they were dealing to him, and he  
9       was dealing in relatively minor quantities compared to most of  
10      the other defendants, codefendants. I think all of that shows  
11      that he is -- his role in the conspiracy is much more limited  
12      and lower level player than most of the codefendants.

13           His motivation is another critical factor I ask this  
14      Court to consider. You can read in the Presentence Report he  
15      had a very tough childhood. His family -- he comes from a  
16      family of substance abusers, whether it be alcohol or drugs.  
17      He got into it at a very early age following the pattern of  
18      his mother and stepfather and it has seized a hold of his life  
19      and really to this point ruined his life, destroyed his life.  
20      It's the cause for most of his problems, including his  
21      expensive criminal history.

22           The character letters that I've submitted show that  
23      at heart that he can get off of drugs; he's a good person, and  
24      that's probably true of a lot of these drug addicts. The  
25      drugs turn them into people they're not at heart.

1           You can see from his letter, from his guilty plea,  
2           from his statement to the PSR that he has a lot of remorse and  
3           that he wants to turn his life around and I would ask the  
4           Court to give him that chance.

5           We would also ask the Court respectfully to  
6           recommended that he be enrolled in the drug treatment program  
7           and he also asks that he be confined as near to this DFW area  
8           as possible because this is where his children are, this is  
9           where the mother of his children are, and he is especially  
10          with his young twins he hopes to begin to bond with them in a  
11          way that he hasn't done before because of his addiction.

12          I would submit that a five to six year sentence would  
13          be appropriate in this case to do justice in this case in  
14          recognition of all of the factors I've discussed.

15               **THE COURT:** Thank you, Mr. Davidson.

16               Mr. Harris, do you wish to speak on your behalf or  
17          present information in mitigation of your sentence?

18               **THE DEFENDANT:** Yes, sir. I just wanted to pretty  
19          much say everything I needed to say, sir, in that letter.  
20          That's why I sat down and wrote it. It comes from the heart.  
21          I ask that I get help and I want to apologize to everybody for  
22          everything and that's pretty much it, sir.

23               **THE COURT:** Thank you, sir.

24               I will now state the sentence determined pursuant to  
25          Title 18 U.S.C. § 3553, treating the Sentencing Guidelines as

1 advisory only.

2 In arriving at a reasonable sentence I've taken into  
3 account primarily the conduct admitted in the Factual Resume  
4 as well as those matters required to be considered by 3553.

5 It is the judgment of the Court that the defendant is  
6 committed to the custody of the Federal Bureau of Prisons for  
7 a period of 151 months.

8 I do not order a fine.

9 I do order a mandatory special assessment of \$100.

10 It is further ordered that upon your release you be  
11 placed on supervised release for a term of 4 years.

12 It is further ordered that upon your release that you  
13 comply with the standard conditions contained in this judgment  
14 as well as the mandatory and special conditioned stated  
15 herein.

16 Have you gone over those conditions of release with  
17 your client?

18 **MR. DAVIDSON:** I have, Your Honor.

19 **THE COURT:** Do you understand those conditions, sir?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** I will order those conditions imposed in  
22 your case.

23 I'd believe that this is the appropriate sentence in  
24 this case given all of the facts and circumstances and that  
25 this sentence is sufficient, but not greater than necessary,

1 to comply about the statutory purposes of sentencing.

2 In particular, I've taken into account the arguments  
3 made by Mr. Davidson in his sentencing documents as well as  
4 the letter and the information provided to me by the defendant  
5 in his letter to me and I've balanced those with both the  
6 offense conduct at issue in this case as well as the extremely  
7 long criminal history and note that the defendant has been  
8 given multiple chances to rehabilitate and to obtain drug  
9 rehab and that nothing seems to have worked. As a result, I  
10 believe that even if I'm wrong as to my rulings as to any of  
11 these objections, this is the sentence I believe, when  
12 considering all of the appropriate 3553(a) factors, that this  
13 sentence I believe protects the public from further crimes,  
14 provides just punishment, and affords adequate deterrents.

15 Is there any objection from the Government to this  
16 sentence.

17 **MR. SMITH:** No, Your Honor.

18 **THE COURT:** From the defense?

19 **MR. DAVIDSON:** Your Honor, for the record we would  
20 object to the sentence as unreasonable for the reasons stated  
21 in the Sentencing Memo and objections to the Presentence  
22 Report, especially with regard to the mitigating role  
23 adjustment and the request for downward variance and all the  
24 factors I cited in that regard.

25 **THE COURT:** Yes, sir. Those are all overruled for

1 the reasons I stated.

2 MR. DAVIDSON: Thank you.

3 THE COURT: I will recommend that you be placed  
4 somewhere within the DFW area, if possible, and that you be  
5 able to participate in drug treatment programs, if you are  
6 eligible.

7 Now, you also have the right to appeal this sentence  
8 and if you decide to appeal this sentence you have the right  
9 to apply for leave to appeal in forma pauperis if you are  
10 unable to pay the costs of an appeal and if you decide to a  
11 people your notice must be filed within 14 days. Talk to  
12 Mr. Davidson about your appellate rights.

13 Is there anything else we should take up from the  
14 Government?

15 MR. SMITH: No, Your Honor.

16 THE COURT: And, Mr. Davidson?

17 MR. DAVIDSON: No, Your Honor.

18 THE COURT: Then good luck to you sir and thank you  
19 both for being here.

20 MR. DAVIDSON: That you, Your Honor.

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1 I, **DENVER B. RODEN**, United States Court Reporter for the  
2 United States District Court in and for the Northern District  
3 of Texas, Fort Worth Division, hereby certify that the above  
4 and foregoing contains a true and correct transcription of the  
5 proceedings in the above entitled and numbered cause.

6 **WITNESS MY HAND** on this 10th day of January, 2016.

7  
8  
9 /s/ Denver B. Roden

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